subjective words have been used, it is not within the competency of the courts to question the necessity or expediency of the legislative provision.

There is a fair number of authorities on this point. I need refer to only one:

In *R.* v. *Comptroller of Patents — ex parte Bayer Products Ltd.*[3] it was held that if a regulation is expressed to have been made because it appeared to His Majesty in Council to be necessary to secure, *inter* alia, the public safety, the defence of the realm and the maintenance of public order, the court had no jurisdiction to investigate the reasons which impelled His Majesty to the conclusion that it was necessary or expedient to make the regulation or to enquire whether the making of the regulation was in fact necessary or expedient to effect any of the specified purposes.

The conclusion seems to me therefore to be that the definition of "seditious tendency" in section 3(1)(f) of the Sedition Act is not *ultra vires* the Constitution or beyond the powers of Parliament to enact and that touching on the M.C.E. results is a validly imposed restriction on the freedom of speech.

Mr. Karpal Singh for the applicants had a further contention. He argued that a man should be allowed to determine for himself what he would speak on and he would do so at his own peril. If he should transgress the laws of sedition, he ran the risk of being charged in court but he should never be subject to control by the Police.

With respect, this contention seemed to me to deny the necessity to prevent incitement to any offence and to safeguard the security of the country and to preserve public order.

The question whether Parliament might not decide for itself the appropriate authority for determining the conditions of a licence came up before the Privy Council in the case of *Francis* v. *Chief of Police*[4] on appeal from the Court of Appeal for St. Christopher, Nevis & Anguilla. The appellant was charged with using a loudspeaker during a public meeting without permission of the Chief of Police, contrary to section 5 of The Public Meetings & Processions Act, 1969. It was contended that section 5 providing for control of loudspeakers at public meetings was *ultra vires* the Constitution because it curtailed the freedom of communication guaranteed by section 10 of the Constitution which in substance is *in pari materia* with our Article 10 without clause (4). Both the High Court and the Privy Council decided that the provision was not *ultra vires* the Constitution. In the judgment of Their Lordships delivered by Lord Pearson, it was said at page 772 that—

"Whatever may be the exact construction of section 10, it must be clear that (1) a wrongful refusal of permission to use a loudspeaker at a public meeting (for instance, if the refusal is inspired by political partiality) would be an unjustified and therefore unconstitutional interference with freedom of communication, because it would restrict the range of communication, and (2) some regulation of the use of loudspeaker is required in order that citizens who do not wish to hear what is said may be protected against 'aural aggression' if that might reach unbearable intensity.

As some regulation of 'noisy instruments' is required, and a system of licensing is the natural method, there must be some licensing authority to grant or refuse the permission. The legislature of the state concerned has decided that the Chief of Police is the suitable officer to be given this power and duty. There is convenience in that choice, as he is concerned with the preservation of public order and knows the prevailing conditions affecting it and therefore to be able to give a quick decision. There is no evidence and no reason to infer that he has abused the power or would be likely to abuse it in any way. It is reasonable to assume that the legislature, knowing the local conditions, made a suitable choice of licensing authority."

For myself I do not conceive it possible to sustain any argument that a general ban on touching on the sensitive issues as spelled out makes for partiality or that in imposing the ban laid down by law or seeking to enforce it in a permit issued to an applicant is leaning against it.

The final question is whether section 27 of the Police Act empowers the O.C.P.D. to impose this ban, because it does not expressly refer to it. Whether or not it might have been better to have some expression defining his powers in relation to these sensitive issues, he as the proper licensing authority is not without guidance. As the officer-in-charge of a police district and the appointed licensing officer, it becomes his duty in issuing such licences to preserve, at the same time, public order in and the security of the district in particular and the country at large, and clearly this he can best do by prevention rather than by detection.

In my view, the O.C.P.D. has powers under section 27 to impose condition 14.

I now remit the case to the learned magistrate to try the case according to the law.

Order accordingly.

Solicitors: *Karpal Singh, Wong & Co.*

MARIYAYEE & ANOR. v. NADARAJAN

[O.C.J. (Abdoolcader J.) June 9, 1975]
[Ipoh — Civil Suit No. 366 of 1972]

Damages — Fatal accident involving cyclist and motorist — Negligence — Claim on behalf of deceased's family — Whether posthumous child entitled to claim relief as dependant — Interest on general damages — Civil Law Act, 1956, ss. 7, 8 and 11.

The plaintiffs brought an action on behalf of the estate and dependants of the deceased who sustained fatal injuries in an accident involving a bicycle ridden by the deceased and a motor car driven by the defendant on June 29, 1972, in Gopeng Road, Ipoh. On that day, the deceased was riding his bicycle from the direction of Ipoh towards Gopeng when a collision took place near the 1st milestone at Gopeng Road between his bicycle and a motor vehicle owned and driven by the defendant and proceeding in the same direction. The deceased left a widow and four infant children including a son born posthumously on whose behalf the plaintiff claimed for special and general damages.

Held: (1) on the balance of probabilities, the defendant was negligent and wholly liable for the collision in which the deceased died;

(2) the posthumous child was entitled to claim relief as a dependant and in the circumstances an allowance of $20 a month for his support was fair and proper;

(3) general damages in the sum of $21,600 plus interest at 6% per annum should be awarded to the deceased's widow and children.

Cases referred to:-

(1) *The George and Richard* (1871) 24 L.T. 717.
(2) *Manns* v. *Carlon* [1940] V.L.R. 280.
(3) *Hannam* v. *Wates Ltd. & Anor., Daily Telegraph,* December 16, 1972; 1 Kemp & Kemp (4th Edn.) p. 356.
(4) *Villar* v. *Gilbey* [1907] A.C. 139.
(5) *Williams* v. *Ocean Coal Co. Ltd.* [1907] 2 K.B. 422.
(6) *Nasib Kaur & Anor.* v. *Cheah Kit & Anor.* [1968] 1 M.L.J. 58.
(7) *Jefford & Anor.* v. *Gee* [1970] 2 Q.B. 130.
(8) *Foong Nan* v. *Sagadevan* [1971] 2 M.L.J. 24.

CIVIL SUIT.

G. Moganasundram (*M. Singaram* with him) for the plaintiffs.

R. Augustin for the defendant.

Abdoolcader J.: This action was brought by the plaintiffs on behalf of the estate and dependants of Thannimalai s/o Packiri ("the deceased") who sustained fatal injuries while riding a bicycle in an accident involving a motor car driven by the defendant on June 29, 1972, in Gopeng Road, Ipoh.

The deceased was riding his bicycle at the material time from the direction of Ipoh towards Gopeng when a collision took place near the 1st milestone Gopeng Road between his bicycle and a motor vehicle bearing registration number PF 8502 owned and driven by the defendant and proceeding in the same direction, and as a result of this collision the deceased died. So much was agreed between the parties.

The issue, however, was the liability for the collision and on this the parties were diametrically divergent, and wholly conflicting versions of the cause of the collision were given by an eye-witness for the plaintiffs and by the defendant and a passenger in his car.

The plaintiffs adduced evidence of the events preceding and culminating in the collision through an eye-witness, B. Santhanasamy (PW2). This witness stated that he knew the deceased and that on the fateful day at about 6.30 p.m. he met the deceased at the Gopeng Road roundabout. Both were riding bicycles and proceeding along Gopeng Road towards the direction of Gopeng with the deceased in front and this witness following behind. He stated that on nearing the road leading to his house which was on the other side of Gopeng Road, the deceased turned back to see if there was any vehicle behind. There were in fact two motor vehicles at the back coming and proceeding in the same direction as the deceased and the witness. The deceased put out his right hand as a signal to turn right and then turned towards his house; at this time the first car was about 138 feet behind the deceased. PW2 then heard the sound of a horn and turned round and saw a third car, which turned out to be that driven by the defendant, overtaking the second car at the back. He then heard a loud bang and saw the deceased thrown above the third car which proceeded onwards but was subsequently overtaken by the second car which forced it to stop.

PW2 stated that at the time of the collision with the defendant's car, the deceased was almost in the centre of the road and opposite the entrance to his house, and that the defendant's car was travelling fast at a speed of 50-60 m.p.h. He said that only the deceased was thrown in the air, not his bicycle which was thrown to the left side. In cross-examination, he said that the deceased was within 2 feet from the grass verge when he gave the signal to turn right and about 20 feet from the entrance to his house and that as it was overtaking the other two cars behind the deceased, the defendant's car was about 5 feet away from the right edge of the road and in another lane of traffic and after so overtaking and at the time of the collision, it had come to the centre of the road.

I found this witness, PW2, intelligent and reliable and he gave his evidence in a fair and honest manner, emerging unscathed and unshaken in cross-examination. Counsel for the defendant put to him that he was not present at the scene as alleged and this, of course, he promptly denied. Counsel then went on somewhat half-heartedly to attempt to discredit this witness by putting to him a few instances of alleged discrepancies between his evidence in court and that given at the hearing of a criminal case against the defendant in the Ipoh Traffic Court. The witness gave prompt and firm answers denying the discrepancies as alleged and giving reasonable explanations, and counsel made no effort to pursue the matter further or prove the statements allegedly attributed to him under the provisions of section 145 of the Evidence Act, 1950, although I raised this point with him.

The defendant gave a wholly different version of how the collision took place and he called as a witness to corroborate him a passenger seated next to him in the car at the time, Cheah Boon Leong (DW2). The defendant said there was another passenger seated at the back in the car at the time of the collision by the name of Cheong Teng Why who however had told him that he was sleeping at the time of the accident and did not know what happened, and that he (the defendant) would therefore not be calling him to testify. This alleged statement attributed to this other passenger was of course hearsay, and I would have thought that he should at least have been called to say so himself and testify to his ignorance of the events which led to and resulted in the collision. Cheah Boon Leong (DW2) testified to the events leading to the accident on almost identical lines as the defendant except that to a large extent in the course of his testimony he translated measurements given in feet by the defendant into their equivalent in yards.

The defendant stated in evidence that while travelling along Gopeng Road on the day in question and at the material time on his way to Kuala Lumpur he saw a cyclist about 100 yards away on the left side of the road and about 3 feet from the grass verge. He said he was travelling at about 35 m.p.h. and that there were no cars in front of him, only behind him, and he was travelling on his side of the road. When he was about 10 feet away from the cyclist, who turned out to be the deceased, the latter suddenly turned right without giving any signal and the defendant tried to avoid him by swerving to the right but his car banged into the front part of the bicycle. His witness DW2 said that he did not see the defendant swerve but he felt the car swerve slightly to the right. His front left lamp knocked into the bicycle and the deceased fell on the car, his head knocking against the extreme

left of the windscreen and frame of the car. He said the accident took place on his side of the road and that the deceased's bicycle was about 5 feet from the grass verge at the time of the collision. He maintained that he was travelling right in the middle of his traffic lane, his car being about 3 feet from the centre white line and that the accident occurred at that point. If this was indeed so, then the deceased could not have been 5 feet from the grass verge at the time of the collision as he alleged but at least some 11 feet according to the measurements on the sketch plan which showed the distance between the edge and centre of the road as 14 feet 9 inches. He then proceeded onwards and stopped about 30 feet from the point of the collision, and stated that the deceased was on the bonnet of his car and was carried about 30 feet after which the deceased fell off the car. He then reversed and with the help of his friends and the occupants of two cars behind him that had stopped he carried the deceased into his car and took him to hospital.

The defendant denied overtaking any cars and that after the collision he proceeded onwards and was forced to stop by the second car, but he agreed that there were two cars behind him which stopped and rendered assistance after the collision. His witness DW2 at first stated in cross-examination that he did not know if there were any cars behind the defendant's car following the collision but later said one car from behind stopped after the collision and a woman got out. Both the defendant and PW2 at least were therefore agreed that there were in fact two cars behind the deceased but the point of difference was whether the two cars were behind the defendant's car or were in fact overtaken by the defendant's car as stated by PW2. I would not, of course, have expected PW2, a gardener, to take particulars of the two cars and their occupants but it seemed surprising to say the least that a person of the standing of the defendant, a school teacher, did not take any particulars of the two cars at the back and their passengers which stopped, as he categorically admitted in answer to a question put by me that the people inside the two cars would have seen what occurred.

In view of the conflicting versions in relation to the cause of the collision, I had to in considering the probabilities of the case not only examine the evidence adduced but also seek assistance from the sketch plan and photographs in the Agreed Bundle. I would pause to add that the plea of *res ipsa loquitur* raised in the Statement of Claim was abandoned by counsel for the plaintiffs and, in my view, rightly so, as that doctrine of evidence could not apply to the circumstances of this case.

As I pointed out earlier, the defendant in evidence stated that the deceased without giving any signal turned right across into the path of his oncoming car when he was 10 feet away from the deceased and the deceased at that time was still about 3 feet from the left edge of the road. He alleged the collision occurred about 11 feet from the edge of the road (according to his evidence that it took place about 3 feet from the centre white line) and this would mean that with both vehicles at all times travelling in the same distance of time, the defendant's car travelled about 10 feet while the deceased's bicycle travelled between 6 to 8 feet. The defendant had to agree in cross-examination that this was not possible although his witness DW2 refused to in cross-examination. It would appear to me that on the defendant's version of the accident the collision could not have taken place because at the material time both the bicycle and the car were in motion.

The scratch mark "D" on the sketch plan leading up to the bicycle began at a point 8 feet 4 inches from the left side of the road. The defendant stated that the bicycle was flung first and then dragged for some distance. The trajectory of the scratch marks leading from "D" to the bicycle on the grass verge as shown in the sketch plan would, in my view, clearly appear to substantiate the version of the accident given by PW2. The defendant had stated in evidence that he had tried to avoid the deceased by swerving to the right and attempted, somewhat lamely, I thought, to explain the scratch marks on the road which I have referred to by stating only in re-examination after the point had been put to him in cross-examination that on colliding with the deceased he then swerved to the left.

The normal reaction in the circumstances of a collision such as the one in question would have been, in my view, to apply the brakes but the defendant did not do so. Again, seeing the deceased coming on into his path and not stopping, the normal reaction would have been for the defendant to have swerved to the left and not to the right but this again he did not do. It was furthermore doubtful whether it would have been at all possible for the defendant to swerve to the right and then to the left in the virtually split second in which this must have occurred.

The nature of the scratch marks which must have been caused by the bicycle being dragged along by the car, as the defendant admitted in his evidence, would clearly point to the defendant proceeding from the right lane of traffic in Gopeng Road after overtaking the cars in front of him as alleged by PW2 and then attempting to return to his correct side of the road. If the defendant had swerved to the right as he stated and there was no oncoming car, there was no need for him to then swerve to the left. His explanation for the scratch marks on the left side of the road could not stand any serious scrutiny. The fact that the deceased's bicycle was flung and then dragged would further explain why the scratch marks started at point "D" in the sketch plan which was beyond the entrance to the deceased's house on the other side of the road.

The photographs showed that the crossbar of the deceased's bicycle was dented inwards and only the nearside front of the defendant's motor car collided with the bicycle. This would seem consistent with the car coming from the right to the left and hitting the bicycle and also explain why the momentum carried both the car and bicycle diagonally across the road.

Counsel for the defendant sought to explain the cause of the accident by mathematical calculations on the basis of a table appearing at page 106 in *Bingham's* Motor Claims Cases (7th Edition) but grounded wholly on assumptions (which he admitted) particularly in respect of the speed at which the de-

ceased's bicycle was travelling at the time of the collision and in relation to the distances between the first and second cars behind the deceased, without taking into consideration the fact that all the three cars and the bicycle were in fact in motion all the while. I found no merit or substance in his submission. He also attempted to rely on the photograph in the Agreed Bundle showing the front wheel of the deceased's bicycle as bent outwards and suggested that if the defendant's car had overtaken the other two cars and then cut back to the left, then the front wheel of the bicycle would have been pressed inwards. That was certainly not the only inference that could be drawn in view of the fact that, as I have stated, the impact of the collision would appear to have been right against the crossbar of the deceased's bicycle and the manner in which its front wheel was bent could also be explained by the fact that, as the defendant said in his evidence, the bicycle was first flung and then dragged by the car to the left grass verge.

The defendant had pleaded in his defence that the collision was caused by or contributed to by the negligence of the deceased. However, in presenting the defendant's case before me his counsel apparently abandoned any suggestion that there was contributory negligence of any kind on the part of the deceased in the event that I found the defendant negligent. He maintained that the deceased was wholly negligent but conceded that there might have been contributory negligence on the part of the defendant in that event to the extent of 10 per centum in the sense that he should have been more careful and should have sounded his horn. I would only observe in this connection that PW2 had stated that the defendant sounded his horn on overtaking the other two cars, but on the defendant's version of what transpired that evening, I would have thought that sounding his horn would have hardly made any difference when the cyclist was alleged to have cut right across his path at a distance of only 10 feet from his car which was travelling on his affirmation at a speed of about 35 m.p.h.

On a consideration of all the evidence adduced before me and of the sketch plan, photographs and other relevant documents in the Agreed Bundle, I found on a balance of probabilities that the defendant was negligent and wholly liable for the collision in which the deceased died. I also considered the question of any contributory negligence on the part of the deceased although this matter was abandoned by counsel for the defendant and found there was none.

On the question of damages: Special damages were agreed between the parties at $200. Both sides were equally agreed that the claim for loss of expectation of life would be absorbed in the award of damages for loss of dependency if the latter exceeded the conventional sum of $3,500, as there should be no overlapping in the damages awarded under sections 7 and 8 respectively of the Civil Law Act, 1956. The quantum of general damages was also virtually agreed as will be apparent presently when I deal with the evidence and submissions on this aspect.

The first plaintiff, the deceased's relict, gave evidence that the deceased was working as a driver earning a wage of $155 per mensem and an annual bonus in that sum. This was supported by a certificate from the deceased's employers to that effect which appeared in the Agreed Bundle. She went on to state that apart from this the deceased had also earned an estimated extra income of $20 to $30 per mensem by driving cars at weddings. Counsel for the defendant categorically stated that he accepted this evidence of extra income. The first plaintiff further testified that the deceased supported and spent between $120 to $130 per mensem on his family which included moneys expended on the deceased himself out of household expenses. Both parties accepted the deceased's age at the time of his death as 32 years. The deceased left a widow and four infant children including a son born posthumously.

Counsel for the defendant taking all these figures into account suggested that the amount expended by the deceased for the support of his family including himself would be $120 per mensem, and deducting therefrom the sum of $20 per mensem in respect of the amount expended on himself, this would leave $100 per mensem. He then suggested, in the circumstances of the deceased's age and the likelihood that he would in fact have retired at the age of 55 years, a purchase of 23 years which he submitted should be reduced by one-third to make allowance for all the necessary contingencies and hazards, leaving therefore a multiplier of 15. He accordingly submitted that the damages for loss of support for the deceased's dependants would work out at $18,000 on the basis of $100 per mensem applied to a multiplier of 15.

Counsel for the plaintiffs accepted these figures, with this difference, however, that he submitted that the deduction of $20 per mensem proposed by counsel for the defendant in respect of household expenses spent on the deceased himself should be off-set by an allowance in the same amount for a posthumous child, Paramesan, born to his grieving but parturient widow on February 27, 1973. The first plaintiff was enceinte at the time of the deceased's death and the child subsequently born was *en ventre sa mere* at the time of the institution of these proceedings but a claim was included on his behalf in the Statement of Claim.

Counsel for the defendant seemed to accept the fact that the posthumous child was entitled to claim relief as a dependant and counsel for the plaintiffs equally seemed to assume that this was so; neither side were able to cite any authority for such entitlement or had perhaps even considered this point. And indeed counsel for the defendant while accepting the fact of such entitlement apparently failed to consider that an appropriate allowance in monetary terms should be made for the infant in question.

I was however satisfied that the posthumous infant Paramesan was in fact entitled in law to claim relief as a dependant of the deceased and referred counsel to authorities on this point. There is a dearth of authority on this aspect but this may well be so because the entitlement of a child born after death cannot be in dispute if it is for its benefit. A posthumous child can obtain compensation for the death of its parents under the Fatal Accidents Acts. In *The George And Richard*[1] a suit for limitation of liability was instituted on behalf of the owners of a brig which was lost in a collision and an appearance was entered

on behalf of a child of one of the drowned men *en ventre sa mere*. The court reserved leave to the child, *en ventre*, if born within due time, to prefer its claim for damages sustained by the death of its father. In the Australian case of *Manns* v. *Carlon*,[2] in which a widow claimed damages on behalf of herself and her unborn child, the trial was stayed until after the birth of the child. In *Hannam* v. *Wates Ltd. and Another*,[3] damages in the sum of £1,760 were awarded to an illegitimate child born six months after her father's death. The House of Lords decided in *Villar* v. *Gilbey*,[4] that a child *en ventre sa mere* is to be deemed born so far as necessary for the benefit of that unborn child. The English Court of Appeal, applying the rule in *Villar* v. *Gilbey*,[4] held in *Williams* v. *Ocean Coal Company, Limited*[5] that a posthumous child was a dependant of a deceased workman under the Workmen's Compensation Act, 1897.

The posthumous child, Paramesan, was accordingly entitled to compensation for his benefit as a dependant of the deceased and I considered an allowance of $20 per mensem for his support was fair and proper and not at all unreasonable.

Applying therefore the figures which as I have said were virtually agreed between the parties and which I approved as fair and reasonable in the circumstances together with the addition of $20 per mensem for the support of the posthumous child, that is to say, loss of support calculated at the rate of $120 per mensem on a purchase of 15 years, general damages amounted to $21,600. Counsel for the plaintiffs asked for interest at 6 per centum per annum on general damages. Counsel for the defendant initially submitted that interest could not be granted on damages and purported to rely on *Nasib Kaur & Another* v. *Cheah Kit & Another*[6] for that proposition, but when I referred him to the provisions of section 11 of the Civil Law Act, 1956 and the principles enunciated in *Jefford* v. *Gee*[7] which was approved and applied by the Federal Court in *Foong Nan* v. *Sagadevan*[8] he then conceded that interest could be awarded. I found this a proper case to award interest on general damages.

In the event I gave judgment for the plaintiffs for special damages as agreed in the sum of $200 and general damages in the sum of $21,600 and the costs of this action, and ordered that the sum of $21,600 be apportioned in the following manner:

1.	Widow (first plaintiff)	$10,000
2.	Kalithasan	2,500
3.	Anbarasu	2,500
4.	Thamilarasi	3,000
5.	Paramesan	3,600

I also awarded interest on the sum of $21,600 at the rate of 6 per centum per annum from the date of the service of the writ to be paid by the defendant to the first plaintiff and further ordered that the amounts due to the four infants to be paid to the Public Trustee to hold on trust until they attain the age of majority with liberty to apply.

Order accordingly.

Solicitors: *Yeoh Kian Teik & Co.; Khong & Son; Lim Ewe Hock.*

MARIASUSAI s/o SUMINADER v. NAM HONG TRADING CO. LTD. & ANOR.

[O.C.J. (Wan Suleiman F.J.) June 28, 1975]
[Seremban — Civil Suit No. 166 of 1970]

Negligence — Liability of employer — Whether injury occurred in the course of employment — Complete loss of vision of one eye — Quantum of damages — Common law liability.

Damages — Loss of vision of one eye — Quantum of damages.

While the plaintiff was milling rubber cuplumps on a machine some substance which came off the roller and which he thought was stone or sand flew into his left eye. As a result he lost vision in his left eye.

The plaintiff sued the first defendants who are the Nam Hong Rubber Factory for damages for the aforesaid injury. The second defendant was joined when the first defendants alleged in their defence that he, and not the first defendants, was the plaintiff's employer. The second defendant admitted that he had hired the plaintiff to work in the factory.

Held: (1) the second defendant was the plaintiff's employer as he had complete control over the hiring and dismissing of his labour force, including the plaintiff;

(2) the plaintiff's injury had been incurred during the course of his employment;

(3) the second defendant was fully liable at common law for negligence in not providing adequate safeguards;

(4) the plaintiff was awarded $15,000 damages for loss of sight in one eye and special damages of $253.20 plus interest.

Cases referred to:-

(1) *Hamzah D.494 & Ors.* v. *Wan Hanafi bin Wan Ali* [1975] 1 M.L.J. 203.

(2) *Jenny Yu & Anor.* v. *Pool & Anor.* [1967] 1 M.L.J. lxi.

(3) *Wee Kim Swee* v. *Cheong Aik Meng* [1964] M.L.J. lxxiii.

(4) *Peck Hock Ser* v. *Green Bus Company Ltd.* [1964] M.L.J. lxxiii.

(5) *Shamsudin* v. *Yap Choh Teh & Anor.* [1969] 1 M.L.J. 26.

CIVIL SUIT.

Khaw Yew Mei (Miss) for the plaintiff.

Atma Singh Gill for the first defendants.

Louis B. P. Cheah for the second defendant.

Wan Suleiman F.J.: The plaintiff, who was a rubber milling machine operator sued the first defendants who are the Nam Hong Rubber Factory, for damages for injuries to his left eye which he alleged was incurred during the course of employment. The second defendant was joined in when the first defendants alleged in their defence that he, and not first defendants was the plaintiff's employer.

In his pleadings second defendant denied that he was plaintiff's employer.

Therefore at the trial, the parties agreed that the following are the matters in issue:

(1) Was the plaintiff the employee of the first defendants or second defendant or both;

(2) Did he sustain the eye injury in the course of employment;